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BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
in and for the STATE OF UTAH

IN THE MATTER OF THE)
VIOLATION OF THE BOARD)
ORDER BY CO-OP MINING)
COMPANY AT THE BEAR CREEK) CAUSE NO. ACT/015/025
CANYON PORTAL, SECTION 25,)
TOWNSHIP 16 SOUTH, RANGE 7)
EAST, EMERY COUNTY, UTAH.)

BE IT REMEMBERED that on the 19th day
of December, 1979, a hearing was held before the
Board of Oil, Gas and Mining in the above-entitled
matter, and said hearing was taken before Athena
Moore, a Certified Shorthand Reporter and Notary
Public in and for the State of Utah, holding Utah
C.S.R. License No. 88, commencing at the hour of
1:00 p.m. in the Executive Room of the Holiday Inn,
1659 West North Temple, Salt Lake City, Utah.

A P P E A R A N C E S

Charles Henderson Chairman
Board of Oil, Gas and Mining

Ray Juvelin, Board Member
Thadis Box, Board Member
Edward Beck, Board Member
E. Steele McIntyre, Board Member

Cleon B. Feight, Director
Division of Oil, Gas & Mining

Mike Minder, Geological Engineer
Frank Hamner, Chief Petroleum Engineer
Ron Daniels, Coordinator Mined Land Development

Denise Dragoo
Special Assistant
Attorney General's Office

I N D E X

<u>Witness</u>	<u>Page</u>
JOE HELFRICH	3
RON DANIELS	10
WENDELL OWEN	16

E X H I B I T S

<u>Number</u>	<u>Page</u>
1	21

1 P R O C E E D I N G S

2 MR. CHAIRMAN: The matter now before the
3 Board will be the matter of the violation of the
4 Board order by Co-op Mining Company at the Bear
5 Creek Canyon Portal, Section 25, Township 16 South,
6 Range 7 East, Emery County, Utah; cessation order
7 and order to show cause, Cause No. ACT/015/025.
8 There isn't any file on it.

9 MS. DRAGOO: There is a file and notice
10 was given on this.

11 MR. CHAIRMAN: Go right ahead, Denise.

12 MS. DRAGOO: All right. In this case
13 we are faced with a similar type violation. The
14 Co-op Mining Company was found to be mining at the
15 Bear Creek Canyon Portal on November 14, 1979, and
16 as a result of that, they were mining without a
17 permit. As a result of that, the Division determined
18 that a cessation order was necessary and they issued
19 a cessation order of all mining activities at that
20 site on November 27, 1979.

21 I suppose at this time it would be
22 good to have Joe again come forward.

23 JOE HELFRICH,
24 called as a witness by and on behalf of the Division
25 of Oil, Gas & Mining, being first duly sworn, was

1 examined and testified as follows:

2 EXAMINATION

3 BY MS. DRAGOO:

4 Q Would you state your full name for
5 the record?

6 A Joe Helfrich.

7 Q Where are you presently employed?

8 A State of Utah, Division of Oil, Gas
9 and Mining.

10 Q And were you present on the inspection
11 of the Bear Creek Canyon Portal of November 14, 1979?

12 A Yes, I was.

13 Q At that time, what did you find?

14 A There had been a road put into an old
15 mine portal at the present site of the Bear Creek
16 Canyon. There was no mining activity at that
17 time.

18 MR. CHAIRMAN: There was no mining
19 activity?

20 THE WITNESS: No, not at the time of
21 the inspection.

22 Q (By Ms. Dragoo) But it had appeared
23 that activity had occurred prior to that date?

24 A Yes. Activity occurred prior to that
25 date.

1 Q To your knowledge has a notice of intent
2 to mine been issued at that portal?

3 A No.

4 Q Based on the workings that you saw at
5 that time, could you determine that mining activity
6 had occurred?

7 A Yes.

8 Q Why don't you just stay up here and
9 answer any questions we have.

10 MR. CHAIRMAN: I think I'm going to have
11 to ask you to speak up, too, Denise.

12 MR. BECK: I wonder if I might ask Joe
13 a question.

14 MS. DRAGOO: Sure.

15 MR. BECK: In what regard did you find
16 mining activity, Joe?

17 THE WITNESS: This was my first visit
18 to that portal, and a new road had been bladed up
19 to an old mine portal, and a pad had been prepared
20 for loadout facilities.

21 MR. BOX: How old or how new a road.
22 You used old and new, and was this within months
23 or weeks, in your opinion?

24 THE WITNESS: I'm not sure of the exact
25 date the road was put in. Ron maybe can answer that

1 question.

2 MR. DANIELS: It might be appropriate to
3 back up a little bit to give you some foundation
4 for the issuance of the order. I don't know the
5 exact date. I think Denise has the inspection.

6 MR. BOX: I don't want the exact dates.
7 I just want to know in terms of old and new. Was it
8 in the last year or years or months?

9 MR. OWEN: Could I tell you a little
10 better what has happened?

11 MR. CHAIRMAN: Let Denise finish her
12 questioning first.

13 MR. OWEN: Okay.

14 Q (By Ms. Dragoo) The activities that
15 you just described, Joe, are those the type of
16 activities that are qualified as mining activities
17 under the Act?

18 A Yes.

19 MS. DRAGOO: That's all the questions
20 I have. Thank you, Joe.

21 MR. OWEN: I don't know how many of
22 the Board members remember that I have already been
23 up here and that same road was already discussed,
24 so it was before that. The road at the present time
25 has not been completed to the point where any

1 equipment could be taken up there. At the time
2 before this other Board meeting that the inspection
3 was made, and at that time we were told that there
4 is a law that you can't put any earth materials on
5 the downslope if it's more than 20 degrees which
6 anyone in mining and with the kind of country we
7 are in would know a clear road up to a portal opening--
8 I don't know any possible way you could put any
9 materials on the downslope. There was already a
10 road up there. They asked me, the Division could see
11 that, too, and asked me if I could make a commitment
12 that we would not put any more earth materials on the
13 downslope at the time. They asked me if there was
14 any other work doing and I said no. The road needs
15 to be improved. At that time they had used front
16 wheel drive on their own vehicles because that was
17 the only way they had to get up there. That
18 improvement is not finished. In fact at the last
19 inspection they weren't even able to drive up
20 there on that account because one of those places
21 where the steep grade was they had started to work
22 on it and with this last order we stopped right
23 there. So at the present time it is impassable.

24 MR. CHAIRMAN: I think you've explained
25 that. Let's go ahead.

1 MR. BECK: I have a couple of questions
2 for Mr. Owen.

3 MR. CHAIRMAN: Go ahead.

4 MR. BECK: What is the percentage of the
5 grade where you're cutting your road or where the
6 road exists; what's the slope of the mountain itself?

7 MR. OWEN: I'd say it's greater than
8 a 45 degree slope and possibly 60.

9 MR. BECK: How much ground would you
10 have to disturb if you made a full cut through
11 there and had to haul all that material away?
12 Do you have any idea in acreage how far you would
13 have to go back and how far up the mountain
14 you would have to disturb? A 45 degree angle, like
15 that?

16 MR. OWEN: You mean to cut the road back
17 in?

18 MR. BECK: Yes, sir. You say the mountain
19 slope is about a 45 degree angle?

20 MR. OWEN: Or greater, 60. Some places
21 they had to shoot rocks right out of the ledge to
22 make it passable.

23 MR. BECK: How much ground above would
24 you have to disturb?

25 MR. OWEN: Additionally now?

1 MR. BECK: Inorder to make your cutback
2 and haul the material out?

3 MR. OWEN: Oh, I see what you mean now.

4 MR. BECK: Instead of dumping over or
5 part of your grade, how far would you have to cut in
6 and disturb the upper part of the mountain to haul
7 all that material out?

8 MR. OWEN: If you had a 60 degree angle
9 you would have to--by the time you include your
10 diversion ditch and your road and your berm, you're
11 talking about possibly 16 feet there. I guess with
12 a calculator and a little trigonometry I could figure
13 the amount. But on a 60 degree angle you'd go back
14 in there about 16 feet.

15 MR. McINTYRE: That would be about 50
16 percent greater?

17 MR. OWEN: Well, in other words, you
18 can't leave a vertical high wall, you're still going
19 to leave a slope. You're going to leave about as much
20 slope after as you had before. In other words, you're
21 going to take that same 16 foot slice up until the
22 slope of the hill itself alleviates.

23 MR. BECK: You would have to go back
24 quite a ways?

25 MR. OWEN: Yes.

1 MR. BECK: If you go back in 16 feet,
2 you're not going to be able to maintain the 80
3 percent slope. You're going to have to reduce that
4 slope to some 20 or 25 percent in order to keep your
5 material up there.

6 MR. OWEN: Or to even get a caterpillar
7 in there, that's true. So it would be considerably
8 more than that. I'm sure you would disturb a lot
9 more area doing it that way than what we're doing
10 going on a downslope. If you simply cut on one
11 side and fill on the other side.

12 MR. BECK: This is another thing that
13 concerns me and we had this before. We had federally
14 funded public roads and were able to go out and able
15 to dump over the side and build up our roadbase and
16 our beds, and yet we can't do it on private property
17 in a coal mine and this disturbs me in a number of
18 ways.

19 MS. DRAGOO: I think we'll call Ron
20 Daniels as a witness if you're through.

21 MR. CHAIRMAN: All right.

22 RON DANIELS,
23 called as a witness by and on behalf of the Division
24 of Oil, Gas and Mining, being first duly sworn, was
25

1 examined and testified as follows:

2 EXAMINATION

3 BY MS. DRAGOO:

4 Q Mr. Daniels, would you state your full
5 name for the record?

6 A Ronald Daniels.

7 Q What is your present employment?

8 A I work for the Division of Oil, Gas and
9 Mining, State of Utah, as the Coordinator of Mined
10 Land Development.

11 Q Thank you. If you recall, we called
12 Co-op Mining through an order to show cause before
13 the Board in June of this year, and at that time the
14 Board ordered that Wendell Owen could continue with
15 his exploration work if he submitted certain things
16 to the Division, such as a notice of intent and
17 went ahead and got the notice of intent.

18 Did Mr. Owen make this submission that
19 the Board requested at that time?

20 A I think it was a motion of the Board
21 rather than an order. I think that's the way it
22 went. There were some submissions made. They
23 weren't in the Division's opinion adequate to
24 address the mining reclamation plan for the operation
25 and we responded with a letter to indicate that we

1 needed some more information on the plan.

2 Q In September of this year Mr. Owen
3 contacted you concerning some proceedings that he
4 was going to undertake concerning the pouring of
5 footings at that site; can you briefly indicate how
6 you responded to him at that time?

7 A Yes. I think we talked on the phone and
8 Mr. Owen presented his case and said because of
9 weather conditions they needed to pour some footings
10 and we wanted to be responsive to that, but we didn't
11 want to go beyond the authority that we had.
12 Essentially what I said to Mr. Owen was "There has
13 been some concern with water in the area. The Castle
14 Valley Special Services District has raised the issue
15 of the possibility of your interrupting the water.
16 Get an agreement with them saying they're happy with
17 your commitment or make the commitment to replace the
18 water that might be affected by the mining. Give us
19 some detail on the strata that would be encountered
20 on the digging for the footings." Mr. Owen indicated
21 there was a lot of coal dust, old coal waste material
22 and slag that was the result of a previous mining
23 operation. We wanted to be sure what he was getting
24 into and get some idea what the strata was. We asked
25 for a physical log of the area.

1 There was one other item and I think we
2 said "Post the bond for the Trail Canyon Mine before
3 you proceed with this one so we could have at least
4 that operation tied up."

5 Q To the best of your knowledge were
6 those requirements met by Mr. Owen prior to the
7 proceeding with the pouring of footings?

8 A No.

9 Q Based on the reports that were given to
10 you by inspectors sent to the site on November 14,
11 was there additional work beyond the work that had
12 been done in June at that Bear Creek Canyon Portal
13 site?

14 A Yes. There were indications where the
15 inspectors indicated that there was some additional
16 pad work. The footings had been poured and there
17 was just the general proceeding with the mining
18 activity going on.

19 Q Did that additional mining activity
20 go beyond exploration, in your opinion?

21 A In my opinion, it did, yes. I think
22 there were some special concerns, especially with
23 the water in the area that we wanted to at least
24 have assurances on before anything else was done.

25 Q The Division issued its cessation order

1 based on the fact that mining was occurring and
2 was occurring without a notice of intent to mine,
3 was that the reason for the cessation order?

4 A Right. Mike pointed out to me that
5 Joe indicated that there was a plan filed, but it
6 hadn't gone through the approval process. There
7 was a mining reclamation plan on file, but it
8 hadn't been through the approval process.

9 Q All right. Thank you. Are there any
10 questions of Ron at this time?

11 MR. JUVELIN: I have one. The
12 mining reclamation plan that had not gone through
13 the approval, it was at the Division office, but
14 the Division had not found time to go through the
15 plan, is that correct?

16 MR. DANIELS: It was a strange occurrence
17 of events. What happened was they had filed for
18 the plan. I don't know the exact date, but I could
19 find it in the file. We were reviewing that and
20 then at that point was when I received the request
21 to pour the footings. So the plan was in and we
22 were working on it and we said, "Sure, pour the
23 footings with these three stipulations." We were
24 working on it all that time and eventually we did
25 send out our recommendation and did finish the

1 review of the plan and we did send to Co-op the
2 additional items that needed to be completed. So
3 it was in the process of being completed.

4 MR. CHAIRMAN: Ron, let me ask you a
5 question. You said at the time you suggested to
6 them to post a bond on the Trail Canyon before they
7 started on the Bear Creek Mine, was that during the
8 time that the surety had been posted and not reached
9 the Board?

10 THE WITNESS: I don't know the exact
11 time of when that was put into the account.

12 MR. CHAIRMAN: But there isn't any
13 surety posted on the Bear Creek Canyon?

14 THE WITNESS: Right.

15 MR. OWEN: I don't believe there has
16 been a negotiation between the Division and ourselves
17 as to the amount of the surety on the Bear Creek
18 Canyon.

19 Q (By Ms. Dragoo) So, Mr. Daniels, is
20 it the recommendation of the Division that this
21 cessation order continue until such time as an
22 approved notice of intent to mine is obtained and
23 a surety is posted?

24 A That would be our recommendation.

25 MS. DRAGOO: I guess that's all I have

1 of Ron.

2 MR. CHAIRMAN: Would you like to ask
3 Ron any questions or make any comments?

4 MR. OWEN: Just comments. There are
5 comments I would like to make at this time.

6 MR. CHAIRMAN: Did we have Mr. Owen
7 sworn in in this case?

8 MS. DRAGOO: No.

9 MR. CHAIRMAN: Let's have him sworn at
10 this time.

11 WENDELL OWEN,

12 called as a witness by and on behalf of Co-op Mining
13 Company, being first duly sworn, was examined and
14 testified as follows:

15 MR. OWEN: As I recall, at this Board
16 meeting in June, the Board did recommend because
17 of the situation the reason that we were trying to
18 get this Bear Canyon thing done this past season--
19 I believe they did recommend to the Division that
20 we did all we could to expedite this and I'm sure
21 they did and I'm sure they had a heavy workload,
22 but we're talking about a time from June to September
23 that Mr. Daniels stated that these things came up and
24 they were having to go over these different things
25 and then they come up with the other things that we

1 needed.

2 Now one thing that, too, that we were
3 waiting for that made it so it took this long was
4 that I had to request this special permission to
5 pour footings in September--would it be all right
6 if I went off the record for a minute?

7 MR. CHAIRMAN: Do you intend to make a
8 point during that period?

9 MR. OWEN: Yes.

10 MR. CHAIRMAN: Then you'd better stay
11 on the record in that case. I think we'd better if
12 it's going to be part of this case.

13 MR. OWEN: All right. We were done a
14 favor. We were waiting for some of our things that
15 they were requiring to get our final thing in there
16 that they were asking for for some information that
17 some of the people of the Board were getting for us.
18 They obviously can't do it for everybody. It was
19 done as a favor and I appreciated it, but it did
20 take quite a bit of time. It was in regards to the
21 culvert sizes and things. Information they had
22 access to that we would have had to possibly go to
23 considerable expense in getting. It was done as
24 a favor and we appreciated it, but that did involve
25 a lot of that time. Maybe we would have made it in

1 time if we had had a consultant firm come but then
2 sometimes they're slow, too. In other words, I'm
3 not complaining or finding any fault with what was
4 done there, but that was some of the things we were
5 waiting for before we had some of the final things
6 in that they were asking for.

7 The things that Mr. Daniels stated that
8 he told us when we first requested permission to
9 pour footings, I have in this letter here that he
10 sent to us. These things were stated in the letter.
11 I don't want to dispute Mr. Daniels, but as I recall
12 the happenings and I made this telephone call, the
13 thing he told me was, "Yes, I'm sure that would be
14 all right, but we do need some kind of a record
15 showing the reasons why you need to pour at this
16 time." In other words, to get ahead of the freezing
17 weather and so on so that we can go ahead and push
18 this thing through completion. So he said if you
19 send in writing your reasons, it would be all right.
20 And on that basis I did get a letter out and got it
21 written up, but at the same time since he had said
22 it would be all right, we did commence our work. In
23 other words, I engaged a contractor to pour the foot-
24 ings and started the cat work to clear the path for
25 it and sent the thing in writing. The date of this

1 is September 17--was my phone call for permission.
2 September 19 I sent the letter in and on the 26th
3 I received this letter dated September 26th. I
4 received it two days later, the 28th which was
5 about 10 days after the original conversation.
6 There had been considerable work done. One of the
7 footings was poured and the pad was made. That was
8 the additional work. There had been several references
9 made to the mining operations and maybe the Board is
10 familiar to these terms and I'm not, but it sounded
11 like we were going to mine coal or something or
12 preparing to mine which we were not. The only ad-
13 ditional work that was done after this other Board
14 hearing when we had made that road up the hill was
15 these two pads for the footings and one was poured.

16 Later I received another letter from
17 Mr. Daniels stating that since he had not received
18 the stipulations that possibly work wasn't as urgent
19 as I made it sound, but I would like to call attention
20 to the fourth stipulation here and that was "Settle
21 the agreement of the water replacement issue with
22 Castle Valley Special Services District." They
23 filed a protest on our application. Part of the
24 water source is coming from a spring out of Bear
25 Creek Canyon. Now this is almost a mile down from

1 the disturbed area and on a considerably lower strata,
2 and there has already been--in other words there has
3 been an existing mine there before where they had
4 not encountered water and the spring is running. In
5 fact I think it's been there later than the mine as
6 far as dates. In other words, they did file this
7 protest which made it so that the Division naturally
8 had to hold it up on that protest. So in view of
9 that when I received this letter on September 28,
10 October 1 I met with the Mayor of Huntington City
11 and a representative of Castle Valley Special Services
12 District also and discussed with them what it would
13 take to get this straightened out, and they invited
14 me to send a proposed contract to them for their
15 approval which I did. I failed to make other
16 copies, but I do have one copy of what we submitted
17 to those people if anybody cares to look at it.
18 I'm sorry I didn't make other copies. Like I say
19 that was on October 3rd that I submitted that.
20 October 1st I first talked to them and then on
21 October 3rd I submitted it. The next time I checked
22 they said they sent it to their attorney who is
23 by the way the City Attorney is also the Emery
24 County Attorney. Now I had made several phone
25 calls, the last one being yesterday, December 18.

1 Each time I was told by this attorney, Mr. Scott
2 Johansen, that he hasn't yet gone through it and
3 he would shortly and call me back.

4 That's the reason I never have responded
5 to this last thing because I simply was waiting on
6 some kind of response to get this thing settled
7 with the Castle Valley Special Services District.

8 MR. CHAIRMAN: Mr. Owen, I think we
9 will mark that as an exhibit.

10 (Whereupon Exhibit No. 1 was marked for
11 identification.)

12 MR. OWEN: Now on September 24 I did
13 receive the information that I needed for culvert
14 sizes and have since then with having that information
15 gone ahead with the completion of things so far that
16 have been requested. I have a copy of the things
17 they sent me here dated 11-2 stating the things they
18 needed for the Bear Creek Mine. I have to the
19 best of my knowledge and ability either submitted
20 or committed to submit the things that are
21 requested therein.

22 I still state my position as it was
23 in the previous Board meeting, that I would like to
24 get the clearance to go ahead. As I say there was
25 an old mining operation that had been considerably

1 disturbed and I would like to go ahead and get a
2 pond in there and get it cleaned up and take care
3 of it right.

4 MS. DRAGOO: Perhaps we should summarize
5 by saying---

6 MR. OWEN: --excuse me. Just one more
7 thing. I'm not going ahead on that work. When I
8 received this letter, at the time I received this
9 we stopped work. The second footing wasn't poured.
10 We stopped the road work right there and haven't
11 since done anything since we received this last
12 letter.

13 MR. KINGSTON: We have been tied up
14 since September. We can't do anything because the
15 attorney in Emery County has this agreement on this
16 desk and when he gets to it we can go ahead on our
17 operations. That's what it amounts to.

18 MS. DRAGOO: Ron, is there presently a
19 problem down there with runoff or is there anything
20 that is causing an incurrment on the environment
21 at this time?

22 MR. DANIELS: The natural spring flow
23 in the Bear Creek Canyon is not that high quality
24 of water. I think when you look at it at certain
25 times of the year it is very poor quality. Very

1 high suspended solids in the water.

2 MR. OWEN: Could you make it clear that
3 that is before it enters this area?

4 MR. DANIELS: Yes. That occurs naturally.
5 So I don't think as far as degrading that water any
6 more there is a real problem. But I don't think we
7 should add to it. Some people suggested that for
8 the work that has been done thus far temporary
9 sediment structures be installed. I don't think
10 we arrived at this decision yet. I think we do
11 feel strongly about work not proceeding before the
12 plan is ultimately approved.

13 I would like to clear up one thing in
14 our verbal conversation. Probably it was a mis-
15 communication on my part, but what I intended to say
16 was send us the proposal in writing, then we will
17 respond to you in writing as to how far we can go
18 with that, rather than go ahead and tell us what
19 you're doing afterwards. That may have been a mis-
20 communication on my part.

21 MS. DRAGOO: That's all I have.

22 MR. BECK: Ron, do we have any water
23 agreements, any other mining concern with Huntington
24 City?

25 MR. DANIELS: With the city, yes. There

1 is one that Swisher Coal Company holds. Huntington
2 Canyon No. 4.

3 MR. BECK: This is the only one in Bear
4 Creek?

5 MR. DANIELS: Right. There is confusion
6 in the names because Swisher is in Little Bear
7 Canyon which is further up the canyon.

8 MR. KINGSTON: That's on the south side
9 of the canyon.

10 MR. DANIELS: I'm not sure that we can
11 say because there was mining there before in the
12 same area that it will not affect the spring. I
13 don't think the mining was to any extent equal in
14 the projected volume and production as this mine
15 will be. I think we feel strongly about not pro-
16 ceeding until the plan is filed and the water
17 question is resolved.

18 MR. OWEN: We are committing this
19 agreement if they will accept it to be responsive.

20 MS. DRAGOO: I think what we need to do
21 is follow the procedures for having a hearing; first
22 of all getting your submission and having those
23 approved by the Division and having a hearing on it.
24 A lot of people like to protest and express their
25 views if they need to. So we can't allow you to

1 continue mining or start up operations until such
2 time as we've gone through those procedures.

3 MR. KINGSTON: What we would like to
4 know, too, if we could take and get some kind of
5 commitment from the Division of Oil, Gas and Mining
6 as to when this will take place. We've been shut
7 down on operations on the new mine for almost three
8 months now, and we don't know if anything is
9 happening. We will commit to take care of the
10 problems in the Trail Canyon, but we would like
11 some kind of commitment as to when we can go ahead
12 and get something done because we have commitments
13 in future years for the coal that is coming out
14 of there. We have contractors waiting to do the
15 work. This costs money. It costs us a great deal
16 of money.

17 MS. DRAGOO: Probably as soon as you can
18 submit a complete mining plan and all of that, then
19 the Division has to comply with certain deadlines,
20 but that deadline does not run until such time as
21 the determination on the completion of your plan.
22 As soon as your plan is adequate, then I believe we
23 can be subject to some time constraints.

24 MR. THOMPSON: May I ask a question?

25 MS. DRAGOO: Yes.

1 MR. THOMPSON: Mr. Owen, you recall
2 there was a letter that went out from Ron and
3 a memo from the staff concerning what was needed,
4 have you complied with that?

5 MR. OWEN: Yes.

6 MR. THOMPSON: I believe the staff can
7 review back and get back to the company by the second
8 week in January, and if everything is complete at
9 that time we can go forward with the tentative
10 approval. If not, we may need some additional
11 material which is unknown at this time without seeing
12 the latest submittal.

13 MR. OWEN: Is there any way the Division
14 can give us any help in maybe putting a little
15 pressure to maybe hurry it up on this attorney
16 in Emery County?

17 MR. McINTYRE: It might be more of a
18 hindrance to you than anything else.

19 MR. BECK: I think you're on your own
20 there.

21 MR. McINTYRE: Let me ask you this,
22 Mr. Owen. You've got the road out there and you
23 started to pour footings for your portal.

24 MR. KINGSTON: The footings is for
25 the stockpile.

1 MR. OWEN: There has nothing been done
2 at the portal other than what was done.

3 MR. McINTYRE: This was in preparation
4 of mining underground at a portal, is it not?

5 MR. OWEN: No.

6 MR. McINTYRE: Can I ask you what schedule,
7 providing everything goes along, and this order is
8 lifted, when do you expect to start production of
9 this particular portal?

10 MR. OWEN: I think from the time we can
11 put full attention to opening it up, we should be
12 able to have an operation in a six-month period.

13 MR. McINTYRE: So the work that is
14 being held up is purely in preparation of mining?

15 MR. OWEN: Yes.

16 MR. McINTYRE: And your full scale
17 mining is at least six months in advance?

18 MR. OWEN: Yes. You see full scale
19 mining has to be after you develop such things as
20 an entry and things like that, so that's why the
21 first thing you have to have is a place to stockpile
22 a small amount of coal as you're doing that prepara-
23 tory work.

24 MR. McINTYRE: We are actually restricting
25 you on preparation work prior to mining, and without

1 the intent to start mining somewhere in the near
2 future, six months at least.

3 MR. OWEN: Yes.

4 MR. CHAIRMAN: Can I ask you a question,
5 Ron? I believe it was said that you could get this
6 review back by the second week of January.

7 How much information do you not have that you need
8 for that review at this time?

9 MR. DANIELS: I think he has given to us
10 the information that he thinks we need and we'll have
11 to look at that and see.

12 MR. CHAIRMAN: You haven't told him what
13 you actually need?

14 MR. DANIELS: Yes, we have. That was
15 included in the letter, the submittal letter. The
16 commitment that he brought in today we feel he
17 fulfills the needs that we indicated we had on the
18 plan.

19 MR. OWEN: With the exception of this
20 contract.

21 MR. CHAIRMAN: In other words, the informa-
22 tion that you needed was what you received today?

23 MR. DANIELS: Yes.

24 MR. CHAIRMAN: And you have that to
25 review and assess by the middle of next month?

1 MR. DANIELS: Right.

2 MR. BECK: I would like to ask Ron a
3 question for the record. In the outside activity
4 of what Mr. Owen has said they have done, isn't this
5 really part of what the law says is mining?

6 MR. DANIELS: That's correct, it is.
7 Anything that is associated with the development of
8 a mine and once that mine is going, the loading of
9 coal from the mine, anything that is leading toward
10 the development.

11 MR. BECK: Is there anything that is feasible
12 in order of giving them permission to do some of the
13 outside work providing they have their permit without
14 actually going into the mine as a mining operation?
15 Can we give them permission to do some of these
16 outside activities or does that have to come through
17 the permit and through the notice of intent to mine?
18 This is all in preparation to mining but it is
19 included in mining.

20 MR. DANIELS: Right. The vehicle for
21 that approval comes in the permit if you want to
22 call it a permit. I think when Mr. Owen was here
23 in June he said we were not doing exploration, we
24 were doing development work for mining. We do
25 intend to develop this as a mine.

1 MR. BECK: Is there any way we can get
2 permission to do that without the permit? Did you
3 say you had the permit for both of these mines now,
4 Mr. Owen?

5 MR. OWEN: No. The permit we have is
6 for the Trail Canyon Mine.

7 MR. BECK: You don't have the permit for
8 the Bear Creek Mine?

9 MR. OWEN: No. I was proceeding on what
10 I thought was verbal okay before freezing weather.

11 MR. BECK: Well, then, really, in order
12 for him to do any preparations he would have to get
13 the permit.

14 MR. OWEN: Right. Does that permit have
15 to wait on this contract with Huntington City inasmuch
16 as we are negotiating in good faith?

17 MR. DANIELS: I don't think we can issue
18 it until that agreement is consummated.

19 MR. CHAIRMAN: What if the agreement isn't
20 consummated?

21 MR. McINTYRE: That's something between
22 them.

23 MR. DANIELS: I think what will happen
24 as a result of that is if that's the direction we
25 are given to proceed without the permit, we will

1 advertise that we issued tentative approval and at
2 that point Huntington City and Castle Valley Services
3 District will be in protesting that tentative approval.
4 They already indicated they protested the preliminary
5 work we did on it, and we didn't even reach the
6 tentative approval stage.

7 MR. McINTYRE: It would be to the
8 advantage of Mr. Owen to wait for the approval of
9 this agreement prior to issuing it because if that
10 was to hold it up we could be getting into quite a
11 bit of controversy. We have to wait until the
12 approval and not stir them up.

13 MR. THOMPSON: Another thought is under
14 the Act we are directed to check the hydrologic
15 system and the company must provide alternate water
16 source if an appropriate water source is affected,
17 so in reality we couldn't give approval to the mining
18 site unless that was taken care of.

19 MR. KINGSTON: At this point we don't
20 think it will affect the water source, so where
21 are we?

22 MR. McINTYRE: That's what I'm saying.
23 You might go into a lengthy court battle.

24 MR. KINGSTON: I don't see how they can
25 prove to us they could affect it. It would be hard

1 for us to prove it wouldn't. If we get a legal
2 standoff like that, I think--just because somebody
3 protests you can't open up the mine.

4 MR. BECK: I think at this point now
5 your agreement, you are agreeing you will furnish
6 the water if anything should happen to it.

7 MR. KINGSTON: If we should affect the
8 water supply, we will be responsible.

9 MR. BECK: Then, Mike, if this agreement
10 goes through, they have to give an alternate plan
11 on how they will furnish that water?

12 MR. THOMPSON: Right.

13 MR. BECK: All right then. This is
14 something then that you have done now.

15 MR. OWEN: We have to give that to the
16 Division or Castle Valley Special Services?

17 MR. THOMPSON: It's part of the mining
18 application.

19 MR. KINGSTON: I think if the two
20 parties arrive at an agreement between us and them
21 that should satisfy the State as far as the water
22 is concerned.

23 MR. BOX: I don't think that plan has
24 to show how you would get the water to replace it
25 if you had to replace it, otherwise you couldn't

1 live up to your contract.

2 MR. BECK: I think this would be one
3 question that they will be asking you in return is
4 how you will supply that water.

5 MR. OWEN: If our mining operation cuts
6 off their water, it would have to be because we
7 tapped the supply and in which case the water would
8 be theirs. If we didn't tap the water supply
9 somewhere, how in the world could you say our opera-
10 tion cut the water supply off. If we didn't hit it,
11 then the water started coming from some place else.

12 MR. BECK: I think this is what Mike
13 is asking for, that you put this into writing and
14 how you will preserve that water for Huntington City
15 providing it's cut off. I think this is what he
16 is saying that you have to have for your permit.

17 MR. THOMPSON: There are several ways
18 water can be replaced. If the mine does intercept
19 the water and flow into the mine as opposed to percu-
20 lating down into the lower strata, they could provide
21 the water from the mining operation once the mining
22 operation is shut down. Another way is drilling
23 ground water, and then the third method would be
24 handled in the reclamation surety whereby there
25 would be enough funds to appropriate water shares

1 of the surface water to replace whatever water normally
2 comes from the stream.

3 MR. KINGSTON: One thing I would like to
4 bring out, as far as we know the water that is involved
5 in this is probably a small portion of what might be
6 going down into the Huntington water supply. I don't
7 even know if they monitored how much there is, but
8 it is a spring that is going in there. I don't know
9 if it's enough to keep four or five households for
10 water. I don't think it's a big item in the water
11 that goes into Huntington. It's not like tapping
12 their whole water supply.

13 MR. CHAIRMAN: Do they put that right
14 into their municipal supply?

15 MR. OWEN: As far as I know, Huntington
16 does have a special service district. They do have
17 a water treatment plant. In other words, if the
18 growth of that area would boom in the coal industry,
19 they would have to put in a water treatment plant
20 down on the river there. As far as I know, they
21 have these two streams, one coming out of Bear
22 Canyon and the other coming out of Swisher where
23 you can put in a small pipe.

24 MR. KINGSTON: It's just a little bit
25 of water as far as that goes.

1 MR. CHAIRMAN: It seems to me we've done
2 all we can on this at the present time. We could
3 try to get this permit out as early as we can and
4 get this contract with the city as early as you can.
5 We would like to help you in saying, "Go ahead," but
6 we can't. I don't know what the Board has to say.
7 Do you want to go into an Executive Session?

8 MR. BECK: No. Absolutely not. I
9 think they have obligations that they've got to do
10 to get their permit. The permit is the most important
11 thing facing him now. When you get your permit, then
12 and you abide by what the Division is asking for and
13 then you can look at the further advancement. I
14 think it all can be done with the Division itself.
15 You've got to satisfy them with your permit. I
16 think you've got to satisfy them with the water, in
17 addition to satisfying Huntington City. Swisher
18 came to an agreement with Huntington City, didn't
19 they?

20 MR. DANIELS: Yes.

21 MR. BECK: I don't think you've got that
22 big of a problem once you settle down and get down
23 and get your plans for how you will restore the
24 water if anything happens and then get it in and
25 get your permit then I think you can move.

1 MR. OWEN: When we receive and get
2 this information in and receive tentative approval,
3 then the closure is no longer in effect, is that
4 right?

5 MR. BECK: No. I don't say that.

6 MR. McINTYRE: You will have to come
7 through normal channels to be lifted.

8 MR. DANIELS: When we do review the
9 plan and work out any details that need to be worked
10 out and determine the amount of the surety and that
11 is acceptable to the Board and we publish it and
12 then tentative approval is issued at the time of
13 publishing, and we solicit the 30 days after the
14 publishing time and receive any comments from
15 anybody that might be affected, and at that point
16 then we can lift the order; after the 30 days when
17 the final approval was issued.

18 MS. DRAGOO: We also have the issue of
19 the fine, too, to resolve in an executive session,
20 I suppose.

21 MR. CHAIRMAN: I think we can decide
22 that when we decide whether we are going to lift
23 the permit or not.

24 MR. DANIELS: I might add that one of
25 the first things that the Division will require

1 when the work does resume is that sedimentation
2 control facilities be installed before the work is
3 done on the mine site.

4 MR. OWEN: There's another thing I would
5 like to enter on that part then. In other words,
6 you put a sedimentation pond which is the first
7 thing to do and then the next thing you've got to
8 do is get the water into it. Now if you study the
9 map that I have there you will find that the
10 diversion structures have to, of course, run right
11 along the site of the proposed area that we are
12 disturbing there. That proposed area right now
13 could be testified by the people visiting there as
14 a series of rocks and gullies and ridges and so
15 on and there is no way any water is going to get down
16 there until the diversion structure is made and there
17 is no way you can get a diversion structure made
18 until you level it down. In other words, the whole
19 thing has to be one operation.

20 MR. DANIELS: I'm not saying you put in
21 the pond. I'm saying you put in the whole system.
22 Pond, diversion structures, etc.

23 MR. OWEN: But the diversion structure
24 has to be part of the whole operation. When the
25 structures are in then it's completed.

1 MR. DANIELS: You're saying it is
2 integral with the operation.

3 MR. OWEN: Yes.

4 MR. DANIELS: We can look at that on
5 the plans and work out the steps for that.

6 MR. CHAIRMAN: It appears now that you're
7 going to have to work this out with the staff, the
8 details. Should we just continue this cessation
9 order?

10 MS. DRAGOO: Yes.

11 MR. BOX: I move then that we continue
12 the cessation order and discuss the fine at the
13 same time we are discussing the other fine in the
14 other matter.

15 MR. BECK: I second it.

16 MR. CHAIRMAN: All in favor say aye.
17 (Aye). So carried. Thank you very much.

18 (Whereupon the hearing concluded.)
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C E R T I F I C A T E

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

I, ATHENA MOORE, do hereby certify that
I am a Certified Shorthand Reporter and Notary Public
in and for the State of Utah; that as such reporter I
attended the above-entitled matter and thereat
reported in Stenotype all the testimony, evidence and
proceedings had therein; that thereafter I caused to
be transcribed my said stenographic notes into
typewriting, and the foregoing constitutes a full,
true and correct transcription of the same, to the
best of my ability.

DATED at Salt Lake City, Utah, this
3rd day of January, 1980.

Athena Moore
ATHENA MOORE
Certified Shorthand Reporter
License No. 88

My Commission Expires:

7/1/81